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May 13, 2008

VIA ELECTRONIC FILING and HAND DELIVERY

The Honorable Vincent J. Poppiti
Special Master
Blank Rome LLP
Chase Manhattan Center, Suite 800
Wilmington, DE 19801-4226

REDACTED
PUBLIC VERSION

Re: *ProMOS Technologies, Inc. v. Freescale Semiconductor, Inc.*,
C.A. No. 06-788-JJF (DM)

Dear Judge Poppiti:

Pursuant to the Second Amended Omnibus Rule 16 Scheduling Order, plaintiff ProMOS Technologies, Inc. ("ProMOS") respectfully submits the following two, distinct discovery issues for the Special Master's consideration and, if necessary, resolution. Those two issues involve: (1) certain damages related documents that ProMOS has been seeking for weeks; and (2) assurances concerning certain Freescale Semiconductor, Inc. ("Freescale") products that ProMOS has identified from various sources but that Freescale apparently has not previously disclosed. In recent days, Freescale has stated that it will supplement discovery on each of these two issues. Accordingly, ProMOS submits this letter simply to reserve its rights to seek further relief from the Special Master in the event Freescale's promised supplementation is not satisfactory.

1. Outstanding Requests for Damages-Related Discovery

As set forth below, Freescale has indicated that certain damages-related data does not exist, when its own documents contradict those assertions. ProMOS has been requesting the missing data since March 14, 2008. As of yesterday, Freescale informed ProMOS that it is continuing to investigate whether the missing data exist. In light of the May 13th deadline for filing discovery disputes with the Special Master, ProMOS is filing this letter to preserve its rights.

ProMOS's efforts to obtain the data in question from Freescale have been unsuccessful to date. After receiving Freescale's initial production of damages-related discovery, ProMOS learned through deposition and subsequent acknowledgements from Freescale's counsel throughout the first few months of this year that the sales, distribution, manufacturing and assembly data was

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either incomplete or intentionally produced without requested (but available) fields.¹ Freescale ultimately provided data for most of the products accused under the Chan patents. There remain, however, approximately 28 products for which Freescale either claimed that it would produce data but has not, or is claiming such data does not exist because the product(s) were never “sold,” although Freescale’s internal documents suggest otherwise.

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Freescale’s explanations do not appear to square with the evidence. First, based on the sales data produced by Freescale, there *are* actual sales for at least the following products for which Freescale’s April 30 response indicates no sales:

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¹ This letter does not relate to Freescale’s refusal to disclose a complete list of its data cache-containing products, which was the subject of DM4.

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ProMOS presented these additional facts to Freescale on April 30, 2008 and again on May 8, 2008. See E-Mails from M. Price to L. Agozzino, Apr. 30, 2008 and May 8, 2008 (Exs. 5 & 6, respectively). To date, Freescale has asserted that it is continuing to “investigate” these matters. ProMOS therefore respectfully requests that the Special Master compel Freescale to produce manufacturing and assembly data for each of the products contained in attachment A, unless Freescale has already done so before this matter is fully briefed and ready for decision by Your Honor.

2. Outstanding Request for Confirmation of No Additional Hidden Freescale Products

Pursuant to paragraphs 2 and 4 of the Agreement on Discovery Issues Related to DM4, Freescale provided ProMOS with final lists of products containing data cache on April 23 and April 25, 2008. Several days later, on May 1, ProMOS provided Freescale with a list of additional Freescale products that appear to contain data caches but which were not included on Freescale’s lists. ProMOS identified these additional Freescale products from documents produced in discovery by Freescale, from depositions, and from other such sources. As of yesterday afternoon, Freescale was continuing to investigate these products to determine whether any of them should have been included on the paragraph 2 or paragraph 4 lists provided pursuant to the Agreement on Discovery Issues Related to DM4. While the parties are continuing to work through this issue, ProMOS wants to preserve its right to raise an issue with Your Honor in the event that Freescale does not provide complete discovery and/or a satisfactory explanation for the additional Freescale products.

Accordingly, ProMOS respectfully requests that the Special Master compel Freescale to provide complete discovery and/or a satisfactory explanation for each of the additional Freescale products contained in attachment A, unless Freescale has already done so before this matter is fully briefed and ready for decision by Your Honor.

Respectfully,

/s/ Lauren E. Maguire

Lauren E. Maguire

² A copy of the cited pages are provided at Ex. 4

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JGD: nml

Attachments

cc: Mary B. Graham, Esquire (via electronic mail)
Steven J. Routh, Esquire (via electronic mail)
David L. Witcoff, Esquire (via electronic mail)

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ATTACHMENT A

REDACTED

EXHIBITS 1 – 7

**REDACTED IN
THEIR ENTIRETY**